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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,377	09/12/2003	Gary Werschmidt	CMED.01US01	6697
27479	7590	11/21/2005	EXAMINER	
COCHRAN FREUND & YOUNG LLC 2026 CARIBOU DR SUITE 200 FORT COLLINS, CO 80525			VU, STEPHEN A	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/661,377	WERSCHMIDT, GARY	
	Examiner	Art Unit	
	Stephen A. Vu	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 September 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 12 and 21-23 is/are allowed.
 6) Claim(s) 1-11,13-16 and 24-34 is/are rejected.
 7) Claim(s) 17-20 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7, 13-16, and 24-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castelot et al (#4,508,384) in view of McInturff (#5,954,402).

Castelot et al show a device comprising a central support chassis comprising two articulating connector pairs (14a) joined by at least one lateral brace (12). The position of an anterior articulator connector (14a) is fixed relative to a posterior articulating connector (14a). A head and thorax support frame (22) may be independently rotatably positioned via the posterior connector (14a) about a coplanar arc of movement. A lower extremity support frame (23) may be independently rotatably positioned via the anterior articulating connector (14a) about a coplanar arc of movement. A transverse

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brace (12) is rigidly joined by the articulating connector pairs. A positioning stand comprises an anterior chassis support frame (21) and a posterior support frame (22). The anterior chassis support frame is connected to the anterior articulating connectors. The posterior chassis support frame is connected to the posterior articulating connectors. A head and thorax support frame (22) is connected to the posterior articulating connectors. However, Castelot et al do not show the lateral braces (12) can be adjusted. McInturff teaches a device (10) that can be adjusted with member (26) telescoping within member (24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lateral braces (12) of Castelot et al's invention to be adjustable as taught by McInturff, in order to allow a user to adjust the length of the lateral braces to accommodate the user's body size.

With claim 2, a lower extremity support frame (23) is connected to the anterior articulating connectors.

With claim 3, a drape of support material (15) is attached and extending across the head and thorax support frame.

Allowable Subject Matter

Claims 8-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 12 and 21-23 are allowed.

Claims 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Remarks

The examiner has reviewed and considered the applicant's comments in the Amendment, filed on September 9, 2005. Accordingly, this Office action is considered to be Non-final.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Vu whose telephone number is 571-272-6862. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen Vu
November 16, 2005